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APPEAL BRIEF

U.S. SERIAL NO.: 10/041,937
FILING DATE: January 8, 2002
INVENTOR: Nee
EXAMINER: Phung Nguyen
GROUP ART UNIT: 2632
CONFIRMATION NO.: 4924

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PATENT

Atty. Dkt. No. ROC920010292US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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In re Application of:
Nee

Serial No.: 10/041,937

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Filed: January 8, 2002

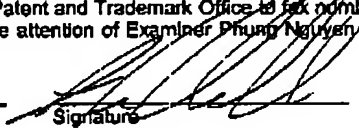
For: Emergency Call and Patient
Locating System for Implanted
Automatic Defibrillators

Group Art Unit: 2632

Examiner: Nguyen, Phung

APR 11 2005

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Commissioner for Patents
P.O. Box 1450
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CERTIFICATE OF FAX 37 CFR 1.8	
I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office to fax number 703/872-9308 to the attention of Examiner Phung Nguyen on the date below:	
April 11, 2005 Date	 Signature

Dear Sir:

APPEAL BRIEF

Applicants submit this Appeal Brief to the Board of Patent Appeals and Interferences on appeal from the decision of the Examiner of Group Art Unit 2632 dated October 20, 2004, finally rejecting claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 40-47 and 49-51. The final rejection of claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 40-47 and 49-51 is appealed. This Appeal Brief is believed to be timely since mailed by the [extended] due date of April 11, 2005, as set by mailing a Notice of Appeal on February 11, 2005. Authorization to charge the fee of \$500.00 for filing this brief is provided on a separate fee transmittal. Please charge any additional fees that may be required to make this Appeal Brief timely and acceptable to Deposit Account No. 09-0465.

355272

Real Party In Interest

The present application has been assigned to International Business Machines Corporation, Armonk, New York.

Related Appeals and Interferences

Applicant asserts that no other appeals or interferences are known to the Applicant, the Applicant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 40-47 and 49-51 are pending in the application. Claims 1-33 were originally presented in the application. Claims 34-39 were added in Applicants' Response to Office Action dated June 5, 2003 and claims 40-51 were added in a Preliminary Amendment filed February 19, 2004. Claims 3, 7, 9-10, 12, 17, 19-20, 22-24-39 and 48 have been canceled without prejudice. Claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 40-47 and 49-51 stand finally rejected as discussed below. The final rejections of claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 40-47 and 49-51 are appealed. The pending claims are shown in the attached Claims Appendix.

Status of Amendments

All claim amendments have been entered by the Examiner. No amendments to the claims were proposed after the final rejection.

Summary of Claimed Subject Matter

Claimed embodiments of the invention provide methods and systems for emergency calls and patient locating.

In one embodiment (e.g., claim 1), a method for selectively placing a distress call in response to activity of an implanted medical device worn by a human subject is provided. (See, e.g., p. 3-4, paragraph 0008, lines 1-4.) In response to receiving a wireless signal from the implanted medical device, a voice synthesized message is generated by an external voice synthesizer to provide information about a nature of the human subject's condition even in the event the human subject wearing the implanted medical device is incapable of verbal communication. (See, e.g., p. 13, paragraph 0041, lines 1-6; and FIG. 3, item 312.) The distress call is transmitted, by an external communications device, in the form of the voice synthesized message to a remote location. (See, e.g., p. 13, paragraph 0041, lines 1-6; p. 14, paragraph 0045, lines 6-8; FIG. 3, item 312; and FIG. 4, item 426.)

In another embodiment (e.g., independent claim 13), a system for selectively placing and handling a distress call is provided. (See, e.g., p. 4, paragraph 0009, lines 1-6; and FIGs. 1 and 2.) The system includes an implanted medical device worn by a human subject and comprising a wireless transmitter for issuing a wireless signal and a wireless external receiver configured to receive the wireless signal from the implanted medical device. (See, e.g., p. 6-8, paragraphs 0021-0024; and FIG. 1.) The system further includes a voice synthesizer configured to generate a voice synthesized message in response to the wireless signal, the voice synthesized message providing information about a nature of the human subject's condition; and an external communications device communicative with the wireless external receiver and configured to transmit a distress call in the form of the voice synthesized message to a remote location in response to receiving input from the wireless external receiver even in the event the human subject wearing the implanted medical device is incapable of verbal communication. (See, e.g., p. 13, paragraph 0041, lines 1-6; p. 14, paragraph 0045, lines 6-8; FIG. 3, item 312; and FIG. 4, item 426.)

In yet another embodiment, a method for selectively placing and handling a distress call in response to activity of an implanted medical device worn by a human subject is provided. (See, e.g., p. 3-4, paragraph 0008, lines 1-4.) An external communications device receives a wireless signal from the implanted medical device and, in response to receiving the wireless signal, an external voice synthesizer generates a voice synthesized message providing information about a nature of the human subject's condition even in the event the human subject is incapable of verbal communication. (See, e.g., p. 13, paragraph 0041, lines 1-6; and FIG. 3, item 312.) The distress call, with the voice synthesized message, is transmitted to a remote location in response to receiving the wireless signal. (See, e.g., p. 13, paragraph 0041, lines 1-6; p. 14, paragraph 0045, lines 6-8; FIG. 3, item 312; and FIG. 4, item 426.) In response to receiving the distress call at the remote location, a patient record is automatically accessed from a database and the patient record is displayed to an operator. (See, e.g., p. 8, paragraph 0025, lines 9-12; and FIG. 1.)

Grounds of Rejection to be Reviewed on Appeal

1. Claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 40-47 and 49-51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nappholz et al.* (US 5,720,770) (hereinafter *Nappholz*).

2. Claims 40, 45 and 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nappholz* in view of *Nelson et al.* (US 6,584,104) (hereinafter *Nelson*).

ARGUMENTS

A. The Examiner Errs in Arguing that Claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 41-44, 47, 49-51 are Obviousness over *Nappholz*

Claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 41-44, 47, 49-51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nappholz*. Applicants have respectfully traversed the rejections based on the failure of *Nappholz* to teach or suggest the claimed subject matter.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2142. To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2143. The present rejection fails to establish at least the third criterion.

Nappholz is directed to a cardiac stimulation system that delivers long-term cardiac therapy without personal supervision by a physician. (See, Abstract.) The Examiner argues that *Nappholz* teaches each of the claimed elements except that *Nappholz* does not teach the voice synthesized message providing information about a nature of the human subject's condition. However, at least some of the claims (e.g., claim 1) recite "generating, by an external voice synthesizer, a voice synthesized message". In his substantive rejection, the Examiner does not suggest that such a step is disclosed in *Nappholz*. Accordingly, on this basis alone Applicant believes the rejection is improper and respectfully requests that the rejection be withdrawn and the claims be allowed.

Applicants do note, however, that the Examiner elaborates on his position regarding the voice synthesized message in the "Response to Arguments", of the

Examiner's Final Office Action mailed October 20, 2004. Specifically, the Examiner states the following:

"Examiner respectfully disagrees with the applicant's argument because, as disclosed by *Nappholz* col. 6, lines 7-9 indicated that RPP 14 utilizes conventional cell phone capabilities which includes voice communication. The device RPP 14 is a communication unit according to col. 4, lines 6-16 refers to police and rescue squad, e.g., 911 police emergency stations which conventionally use interactive voice communication between the emergency station operator and a reporting party. Therefore, it is understood that message generated at external system RPP 14 in response to receiving the signal 24 from ICD transmitted to the remote emergency station 29 is a synthesized voice message." (Examiner's Action, mailed October 20, 2004, page 8.)

The portions of *Nappholz* cited by the Examiner refer to a conventional cell phone which transmits voice data input to the cell phone by a human being. (See, *Nappholz* column 6, lines 7-10.) Thus, the only voice communications disclosed by *Nappholz* originate from a human being speaking into a cell phone. In contrast, the voice synthesized message of the present claims is generated (e.g., by an external voice synthesizer) and that the synthesized message can be generated even in the event the human subject wearing the implanted medical device is "incapable of verbal communication". Since *Nappholz* requires a human being (specifically, the patient wearing the monitoring device) to speak into the cell phone, it follows that the human being is necessarily not incapable of (i.e., is capable of) verbal communication and that the message is not a generated voice synthesized message. The significant difference that the Applicants wish to highlight, is that in *Nappholz* the voice communication originates with a human being, while in the present claims the voice synthesized message is machine generated. *Nappholz* simply does not teach, show or suggest a generated voice synthesized message as claimed.

Further, the claimed voice synthesized message is generated and transmitted in response to a wireless signal from an implanted medical device. Any transmissions from the cellular telephone of *Nappholz* are in response to human voice inputs of the patient wearing the device, not in response to a wireless signal.

Therefore, the claims are believed to be allowable and allowance of the same is respectfully requested.

B. The Examiner Errs In Arguing that Claims 40, 45 and 46 are Obviousness over *Nappholz* in View of *Nelson*

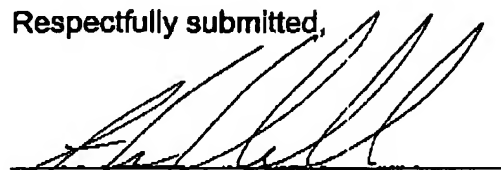
Claims 40, 45 and 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nappholz* in view of *Nelson*. Applicants have respectfully traversed the rejection.

Claims 40 depends from 1. Claim 45 depends from claim 13, and claim 46 depends from claim 45. *Nappholz* as applied to base claims 1 and 13 is believed to have been overcome the reasons given above. Thus, the combination of *Nappholz* and *Nelson* is also believed to be overcome. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claims be allowed.

CONCLUSION

The Examiner errs in finding that the claims are obvious over *Nappholz* and *Nappholz* in view of *Nelson*.

Respectfully submitted,



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CLAIMS APPENDIX

1. (Previously Presented) A method for selectively placing a distress call in response to activity of an implanted medical device worn by a human subject, comprising:
 - receiving a wireless signal from the implanted medical device; and
 - in response to receiving the wireless signal:
 - generating, by an external voice synthesizer, a voice synthesized message providing information about a nature of the human subject's condition even in the event the human subject wearing the implanted medical device is incapable of verbal communication; and
 - transmitting, by an external communications device, the distress call in the form of the voice synthesized message to a remote location.
2. (Previously Presented) The method of claim 1, wherein the wireless signal is indicative of a medical emergency experienced by the human subject wearing the implanted medical device.
3. (Canceled)
4. (Previously Presented) The method of claim 1, prior to transmitting, determining that the wireless signal is indicative of a medical emergency being experienced by the human subject wearing the implanted medical device.
5. (Original) The method of claim 1, wherein the wireless signal and distress call contain vital data pertaining to an organ being monitored by the implanted medical device.
6. (Original) The method of claim 1, wherein the distress call contains location information indicating a location of a device initiating the distress call.

7. (Canceled)

8. (Original) The method of claim 1, wherein the implanted medical device comprises one of a pacemaker, an implantable cardioverter defibrillator and a combination thereof.

9-10. (Canceled)

11. (Original) The method of claim 1, wherein the implanted medical device comprises a transmitter configured to transmit the wireless signal and a heart regulating device.

12. (Canceled)

13. (Previously Presented) A system for selectively placing and handling a distress call, comprising:

an implanted medical device worn by a human subject and comprising a wireless transmitter for issuing a wireless signal;

a wireless external receiver configured to receive the wireless signal from the implanted medical device;

a voice synthesizer configured to generate a voice synthesized message in response to the wireless signal, the voice synthesized message providing information about a nature of the human subject's condition; and

an external communications device communicative with the wireless external receiver and configured to transmit a distress call in the form of the voice synthesized message to a remote location in response to receiving input from the wireless external receiver even in the event the human subject wearing the implanted medical device is incapable of verbal communication.

14. (Original) The system of claim 13, wherein the distress call contains location information indicating a location of the external communications device.

15. (Original) The system of claim 13, further comprising a locator device configured to provide location information to the external communications device, wherein the location information is included in the distress call.

16. (Original) The system of claim 13, wherein the wireless signal and distress call contain vital data pertaining to an organ being monitored by the implanted medical device.

17. (Canceled)

18. (Original) The system of claim 13, wherein the implanted medical device comprises one of a pacemaker, an implantable cardioverter defibrillator and a combination thereof.

19-20. (Canceled)

21. (Original) The system of claim 13, wherein the implanted medical device comprises a transmitter configured to transmit the wireless signal and a heart regulating device.

22. (Canceled)

23. (Previously Presented) The system of claim 13, wherein the external communications device is configured to determine, prior to transmitting the distress call, that the wireless signal is indicative of a medical emergency being experienced by the human subject wearing the implanted medical device.

24-39. (Canceled)

40. (Previously Presented) The method of claim 1, wherein the distress call includes at least one of a serial number and a model number of the implanted medical device.

41. (Previously Presented) The method of claim 1, wherein the external communications device is a cell phone.

42. (Previously Presented) The method of claim 1, further comprising receiving, by the external device, a wireless power status signal from the implanted medical device indicating a low battery power of the implanted medical device.

43. (Previously Presented) The system of claim 13, wherein the external communications device is a cell phone.

44. (Previously Presented) The system of claim 13, wherein the implanted medical device is configured to transmit a wireless power status signal to the external communications device indicating a low battery power of the implanted medical device.

45. (Previously Presented) The system of claim 13, wherein the distress call comprises at least one of the serial number and the model number of the implanted medical device.

46. (Previously Presented) The system of claim 45, wherein the implanted medical device is configured to transmit a wireless power status signal to the external communications device indicating a low battery power of the implanted medical device.

47. (Previously Presented) A method for selectively placing and handling a distress call in response to activity of an implanted medical device worn by a human subject, comprising:

receiving, by an external communications device, a wireless signal from the implanted medical device; and

In response to receiving the wireless signal:
generating, by an external voice synthesizer, a voice synthesized message providing information about a nature of the human subject's condition even in the event the human subject is incapable of verbal communication;
transmitting the distress call, with the voice synthesized message, to a remote location in response to receiving the wireless signal;
receiving the distress call at the remote location;
In response to receiving the distress call at the remote location, automatically accessing a patient record from a database; and
displaying the patient record to an operator.

48. (Canceled)

49. (Previously Presented) The method of claim 47, wherein the external communications device is a cell phone, and further comprising:

inputting the voice synthesized message into the cell phone from which the voice synthesized message is transmitted with the distress call.

50. (Previously Presented) The method of claim 47, wherein the wireless signal and distress call contain vital data pertaining to an organ being monitored by the implanted medical device.

51. (Previously Presented) The method of claim 47, further comprising receiving, by the external device, a wireless status signal from the implanted medical device indicating a low battery power of the implanted medical device.

RELATED PROCEEDINGS APPENDIX

No copies of decisions rendered by a court or the Board in the related appeal or interference listed on page 4 of this Brief are included as there have been no decisions by the court or the Board in the related appeal or interference listed on page 4 of this Brief.